

**MEMORANDUM OF AGREEMENT  
FOR PLANNING AND DEVELOPMENT  
OF A JAPANESE GARDEN  
AT CLARK COLLEGE**

This Memorandum of Agreement is between the City of Vancouver, a municipal corporation under the laws of the State of Washington ("City"), Clark Community College, a municipal corporation under the laws of the State of Washington ("College"), the Parks and Recreation Foundation of Vancouver and Clark County, a Washington non-profit corporation ("Foundation") and SEH America, Inc. ("SEH") a corporation under the laws of the State of Washington collectively referred to as the ("Partners") for the creation of a Japanese Garden ("Garden").

**RECITALS**

WHEREAS, the City and SEH developed the idea of creating a Japanese Garden within the City of Vancouver to provide a regional attraction, a meditative space and a cultural and artistic gem in the heart of the city; and

WHEREAS, the College has agreed to provide property for the proposed development of a Garden on the Clark College Campus located on Fort Vancouver Way and McLoughlin Boulevard in Vancouver, Washington; and

WHEREAS, SEH has provided funding for the creation of a conceptual plan for the Garden and subject to the terms of this Agreement will provide funding for the design, development and maintenance of the Garden; and

WHEREAS, the Foundation has agreed to provide a repository for funds to support the creation of the Garden at Clark College; and

WHEREAS, a design consultant, working with a project team from the College and the City, has created two conceptual plans for the Garden utilizing the view corridor and existing cherry trees on the southwestern end of the College campus to create a showcase feature for the College and the City; and

WHEREAS, a preferred conceptual plan for the Garden has been agreed upon by the College community, the City and SEH; and

WHEREAS, the Partners are prepared to start construction of the Garden upon approval of this Agreement with a goal of completing the project in April 2011.

NOW THEREFORE, THE PARTNERS AGREE AS FOLLOWS:

1. **PURPOSE:** The purpose of this agreement is to set forth the mutual obligations of the City, College, Foundation and SEH with respect to the design, construction and maintenance of the proposed Japanese Garden at Clark College.

2. CITY RESPONSIBILITIES

2.1 Work with the Partners to develop an RFP to select a design consultant for the garden space and elements.

2.2 Work with the Partners to select a design consultant for the Garden. Criteria for a qualified designer shall include the following:

- Experience in high quality, low maintenance Japanese Garden design
- Experience working with municipalities as well as public outreach experience
- Construction oversight/management.

The selected designer shall be responsible for:

- Design development plans
- Acquiring necessary construction permits
- Development of construction contract documents, including plans and specifications
- Conducting necessary meetings at key milestones for approvals with the Partners, regulatory agencies, etc.
- Prepare public outreach materials, as necessary
- Coordinate the construction bid process through the City's procurement department
- Provide ongoing construction contractor oversight to ensure high quality craftsmanship and integrity
- Provide project close-out assistance to the Partners, including as-built drawings and operations/maintenance manual

2.3 Provide design consultant oversight and coordinate a project kick-off meeting with the Partners within thirty (30) days of the selection of the designer. Such meeting will include confirmation of design intent, verification of project schedule and milestones, establishment of key partner contacts and plans for public outreach.

2.4 Act as the lead agency on behalf of the Partners by overseeing the preparation by the designer of plans for the Garden including approval of concept plans at 50% and 90%, cost estimates and specifications.

2.4.1 50% concept design plans will include specifications and cost estimates for the work. The 50% plans shall incorporate elements as noted in the concept plan including water table, stones, trees, etc. Materials shall utilize native southwest Washington materials whenever possible with the exception of artwork and cherry trees.

2.4.2 90% concept plans will have refined all plans, specifications and cost estimates for the Garden. All materials to be used will be clearly defined at this point.

- 2.5 Work with the designer to acquire all necessary permits for the construction of the Garden. All permits shall be coordinated with appropriate College staff so the designer is aware of all issues and constraints.
- 2.6 In consultation with the College and SEH, approve all final design plans to ensure that quality and content are consistent with and meet the intent of the design and that future maintenance requirements are minimized.
- 2.7 Publicly bid the Garden project, following all guidelines and requirements for a City public works project. There shall be a pre-bid meeting on site with the Partners and potential construction bidders to clarify the bid and project. The process of awarding the bid shall follow all required City procedures.
- 2.8 Be responsible for making the final determination on the responsiveness of each bid and determining the lowest responsible bidder. This determination will be presented to the Partners before City Council approval.

If the lowest responsible bid exceeds available funding, approximately \$700,000, the City has the authority to reject all bids and pursue design or other changes to reduce costs after consultation with the Partners. No bid will be accepted by the City unless the College expressly approves in writing the amount available for ongoing maintenance.
- 2.9 In conjunction with College staff, provide oversight of the design consultant throughout the construction of the Garden. Construction will be scheduled to start in the summer of 2010 to minimize the impact on the College's class schedule. All major earthwork and equipment shall be complete by September 15, 2010 to avoid impacts to campus activities. Final construction shall be completed by December 1 unless approved in writing by the Partners.
- 2.10 Pay all invoices associated with the Garden design and construction in a timely manner following required City procedures.
- 2.11 Provide the Foundation with a construction schedule and invoices to reimburse the City for expenses associated with the design and construction of the Garden. The City acknowledges that the invoice(s) must not exceed the available account balance. The City shall have the authority to request change orders to the construction contract which are determined necessary to ensure a safe and functional project. All change orders will be reviewed with the Partners prior to approval. Any additional contract costs from change orders shall be paid out of the project funds held by the Parks Foundation.
- 2.12 The project shall be designed with sufficient construction contingency to avoid cost overrun beyond the available \$700,000. If total construction costs exceed the \$700,000 estimated cost of the Project, such excess costs will be paid first from any remaining unspent design funds and then with agreement by the College, from the \$150,000 earmarked for the maintenance fund as described herein.

- 2.13 To showcase the generous support of SEH America and Clark College, work with the College and SEH to coordinate a dedication ceremony for the Garden, scheduled for April 2011 to coincide with the blossoming of the cherry trees.

### 3. COLLEGE RESPONSIBILITIES

- 3.1 Provide approximately 0.5 acres of property on the Clark College Campus located at Fort Vancouver Way and McLoughlin Blvd. in Vancouver, Washington as the location for the Garden as shown on the preliminary site plan attached hereto as Exhibit "A".
- 3.2 Provide one (1) or more representatives to the planning team for the Garden.
- 3.3 Work with the City and other Partners on the development of an RFP to select a designer in accordance with the criteria referred to herein and oversight of the development of the plans for the Garden
- 3.4 Work with the Partners to oversee the preparation by the designer of plans for the Garden including approval of concept plans at 50% and 90%, cost estimates and specifications.
- 3.5 Coordinate with the designer on the permits for the Garden, making them aware of all issues and constraints.
- 3.6 In consultation with the City and SEH, approve all final design plans to ensure that quality and content are consistent with and meet the intent of the design and that the Garden is designed in such a way as to minimize future maintenance requirements.
- 3.7 In conjunction with the City, provide oversight of the design consultant throughout the construction of the Garden. Construction will be scheduled to start in the summer of 2010 to minimize the impact on the College's class schedule. All major earthwork and equipment shall be completed by September 15, 2010 to avoid impacts to campus activities. Final construction shall be completed by December 1 unless approved in writing by the Partners.
  - 3.7.1 Work with the designer to coordinate the utilities and other site work for the project.
- 3.8 To showcase the Garden and publicly acknowledge the generous support of SEH America, coordinate with the City and SEH to hold a dedication ceremony for the Garden scheduled for April 2011 to coincide with the blossoming of the cherry trees.

- 3.9 Upon completion of the Garden construction receive from the Foundation all remaining funds, less accumulated interest, in the Japanese Garden account in order to establish a maintenance endowment for the Garden.

4. FOUNDATION RESPONSIBILITIES:

- 4.1 Provide a contact person and/or a representative to the planning team for the Garden.
- 4.2 Establish a separate line account for the Clark College Japanese Garden under the City of Vancouver account category.
- 4.3 Provide a repository for funds received from SEH. As a stipulation of accepting and holding such funds, any interest earned from the funds deposited with the Foundation will remain with the Foundation to cover its administrative expenses.
- 4.4 Prepare and send receipts and thank you letters for all donations to the Clark College Japanese Garden.
- 4.5 Provide a report of the funds available in the account upon request of any of the Partners.
- 4.6 Provide payment within thirty (30) days on invoices for specific, stated project purposes submitted by the City. Invoices must not exceed the available account balance.
- 4.7 Upon completion of the Garden construction, remit to the College all remaining funds, less accumulated interest, in the Japanese Garden account for the establishment of a maintenance endowment for the Garden.

5. SEH RESPONSIBILITIES

- 5.1 In consultation with the City and the College, approve all final design plans to ensure that quality and content are consistent with and meet the intent of the design and that the Garden is designed in such a way as to minimize future maintenance requirements.
- 5.2 Upon receiving an invoice from the Foundation provide \$125,000 in funding for the design and permitting of the Garden. Funding for the design and permitting will be needed by approximately November 15, 2009.
- 5.3 Upon receiving an invoice from the Foundation, provide \$700,000 in funding to complete construction of the Garden and \$150,000 for a maintenance fund. In the event that there are additional or unanticipated construction expenses, the City and College will decide if some of the \$150,000 in maintenance funds can be used for construction. Final amount of maintenance fund will be determined upon

completion of the Garden construction. Funding for construction and maintenance will be needed by approximately May 1, 2010.

- 5.4 Follow Clark College's "Campus Facilities Naming Policy" in selecting an appropriate name for the Garden. Within the parameters of the College's naming policy, SEH will be responsible for choosing a name for the Garden.
- 5.5 Work with the City and College to coordinate a dedication ceremony for the Garden, scheduled for April 2011 to coincide with the blossoming of the cherry trees.
6. HOLD HARMLESS AND INDEMNIFICATION: Each party to this Agreement will be responsible for the negligent acts or omissions of its own employees, officers, or agents in the performance of this Agreement. Neither party will be considered the agent of the other and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.
7. TERM OF AGREEMENT: This Agreement shall remain in effect until final completion of construction of the Garden at Clark College estimated to be on or before September 30, 2011. In the event that the project is terminated prior to completion by the mutual agreement between the Partners, the Foundation will pay all outstanding bills and return the remainder of the contributions, if any, less accumulated interest, to the donor in which event this Agreement will also be terminated.
8. INDEPENDENT CAPACITY: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an employer or employee or agent or representative of the other party. Each party shall retain all authority for provision of services, standards or performance, discipline and control of personnel and other matters incident to the performance of any services by that party pursuant to this Agreement.
9. NO ASSIGNMENT: No party shall sell, assign, sublet, transfer, or in any manner encumber the rights and privileges granted herein, nor allow such assignment, subletting, transfer, or any other encumbrance to occur by operation of law or otherwise without the prior consent of the other parties.
10. GOVERNING LAW AND DISPUTES: This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, Partners, through the City Manager (for the City), the Executive Director (for the Foundation), the President (for the College) and the Executive Vice President (for SEH) or their designees shall meet and attempt in good faith to resolve the disagreement. Venue for any action hereunder shall be brought in the Superior Court of Clark County, Washington. Each party shall be responsible for its own attorney's fees and costs incurred in enforcing its rights and responsibilities under this Agreement.
11. ENTIRE AGREEMENT: This constitutes the entire agreement of the Partners, including all oral understanding, on the subject of their general and overall relationship. However, the Partners may negotiate a new agreement as required to continue, or expand agreed

upon services and, any party may enter into other stand alone agreements on specific subjects.

12. MODIFICATION: No alternation or modification of any terms of this Agreement shall be valid unless made in writing and signed by the Partners.
13. NOTICE: Any notices to be given under this Agreement shall at a minimum be delivered, postage prepaid and addressed to:

To the City:  
CITY OF VANCOUVER  
Attn: City Manager  
P.O. Box 1995  
Vancouver, Washington 98668-1995

To Clark Community College:

CLARK COLLEGE  
1800 E. McLoughlin Blvd.  
Vancouver, Washington 98663-3598  
Attn:

To Parks and Recreation Foundation of Vancouver and Clark County:

PARKS AND RECREATION FOUNDATION OF VANCOUVER AND CLARK COUNTY  
P.O. Box 2397  
Vancouver, WA 98668

To SEH America, Inc:

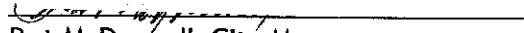
SEH AMERICA, INC.  
4111 NE 112th Ave  
PO Box 8965  
Vancouver, WA 98668-8965

14. DOCUMENT EXECUTION AND FILING: The Partners agree that there shall be four (4) signed originals of this Agreement procured and distributed for signature by the necessary officials of each party. Upon execution, the executed originals of this Agreement shall be returned to the City contract manager who shall cause a copy to be posted on the City of Vancouver web site and who shall transmit three (3) of the executed originals to the other Partners.
15. RATIFICATION: Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.
16. SEVERABILITY: If a section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of the Agreement.

IN WITNESS WHEREOF, the Partners have caused this Agreement to be executed this 2nd day of November, 2009.

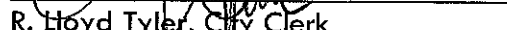
CITY OF VANCOUVER,  
A municipal corporation

SIGNATURE ON FILE

  
Pat McDonnell, City Manager

Attest:

SIGNATURE ON FILE 

  
R. Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

SIGNATURE ON FILE 

Ted H. Gathe, City Attorney

CLARK COLLEGE  
A municipal corporation of the State of Washington

SIGNATURE ON FILE 

Robert Knight, President

PARKS AND RECREATION FOUNDATION  
OF VANCOUVER AND CLARK COUNTY  
A Washington non-profit corporation

  
SIGNATURE ON FILE

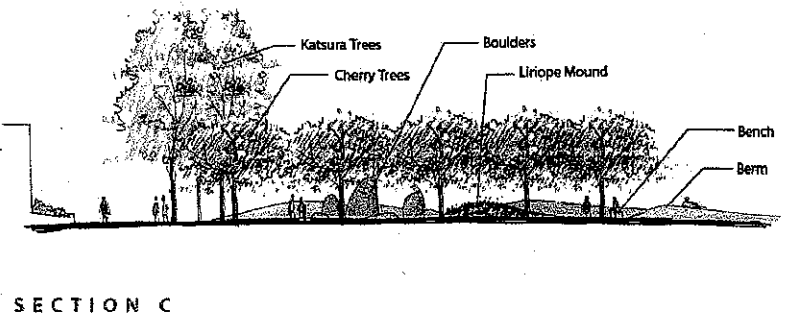
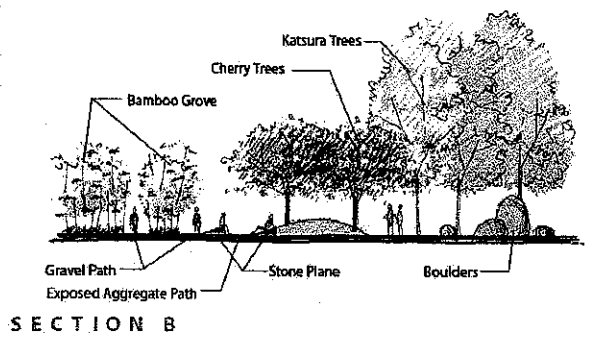
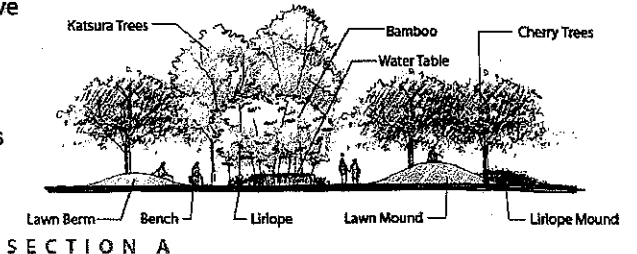
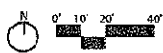
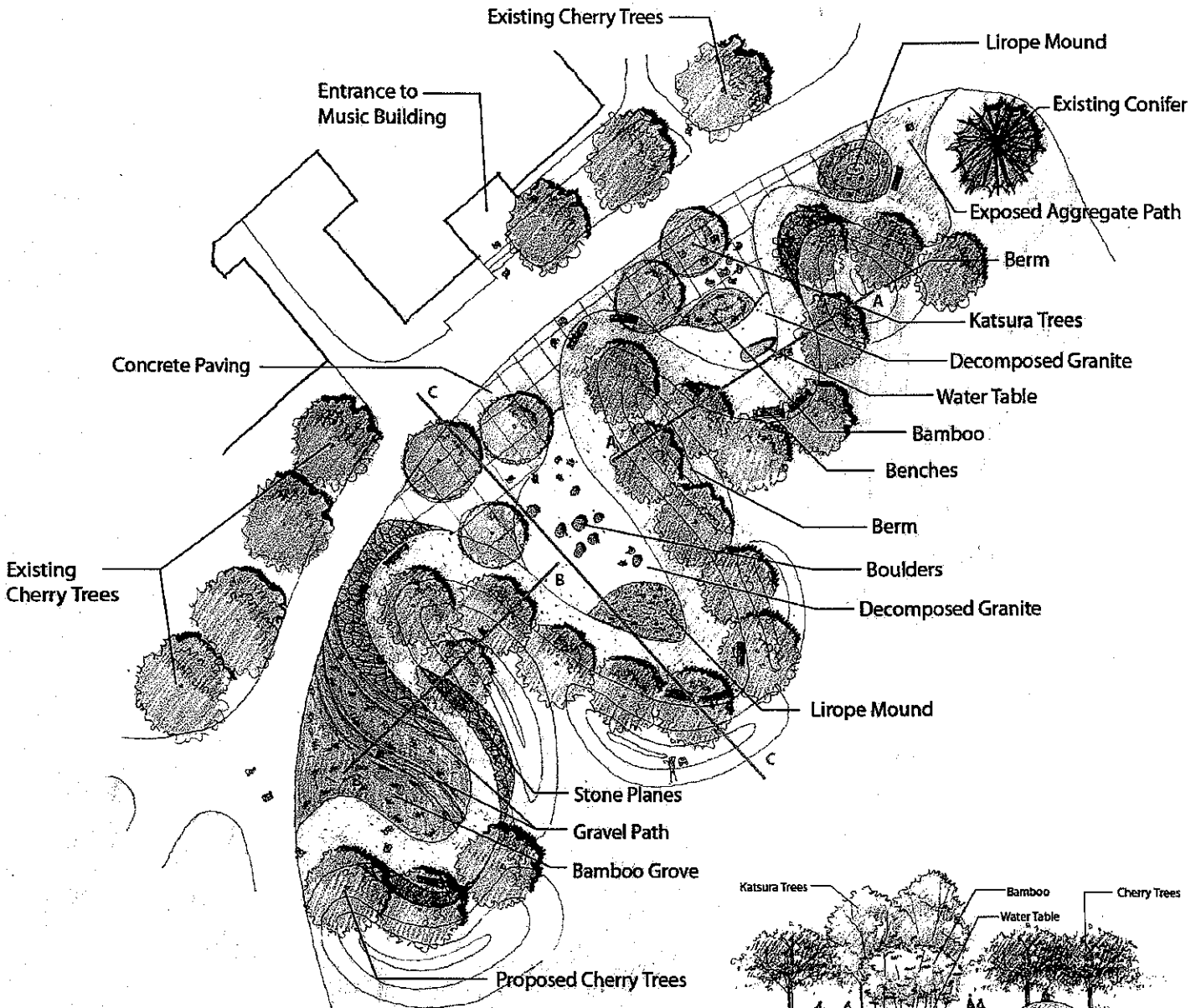
Cheri Martin, Executive Director

SEH AMERICA, INC.

SIGNATURE ON FILE 

Tatsuo Ito, Executive Vice President





**CLARK COLLEGE JAPANESE GARDEN SCHEME B**